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No. 85-1827

In the Supreme Court of the United States

OCTOBER TERM, 1985

GUY GRIDER,
Petitioner,

vs.

TEXAS OIL & GAS CORP. and
TXO PRODUCTION CORP.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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May, 1986

QUESTION PRESENTED

1. Whether denying a litigant the opportunity to visit his own land to conduct pretrial discovery constitutes a denial of that litigant's constitutional right to due process of law?

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No. .....

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

OPINION BELOW

The order of the Supreme Court of the State of Oklahoma was issued on September 16, 1985. It was not reported, but is attached in the Appendix hereto. The order of the Supreme Court of the State of Oklahoma that denied rehearing by a split court 5-3 vote was issued on February 5, 1986. It was not reported, but is also attached in the Appendix hereto.

JURISDICTION

Jurisdiction of this Court is invoked under the legal authority of 28 U.S.C. §2101(c).

CONSTITUTIONAL PROVISIONS INVOLVED

Article VI, cl.2 of the Constitution of the United States provides in pertinent part:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land. . . ."

Amendment 14 of the Constitution of the United States provides in pertinent part:

> "Nor shall any state deprive any person of life, liberty or property without due process of law."

INTRODUCTION

Guy Grider, an individual investor in oil and gas wells in Oklahoma operated by the Respondents, Texas Oil and Gas Corp. and TXO Production Corp., petitions this Court for a writ of certiorari to review the holding of the Supreme Court of Oklahoma that held in effect that a litigant who owns a portion of certain oil and gas leases cannot visit his own land whenever he chooses, at his own risk, as granted by the Operating Agreement signed by the parties, in order to gather evidence for use in the litigation.

STATEMENT

Beginning in February, 1982, Guy Grider purchased a working interest in several oil and gas wells in Oklahoma drilled and operated by Ratliff Exploration Company and by Texas Oil and Gas Corp. and TXO Production Corp. Mr. Grider paid over $1,000,000.00 for his working interest and subsequent proportionate billing for drilling, comple-

tion and operating costs. Grider requested and received a key to *all* of the aforesaid oil and gas leases. Grider used the key to gain access to the land and to view oil and gas operations conducted thereon.

Grider and all other working interest owners signed a Model Form Operating Agreement, AAPL Form No. 610-1977. Article VI, §D, Access to Control Area and Information provides in pertinent part:

> "Each party shall have access to the Contract Area at all reasonable times, at its sole risk to inspect or observe operations, and shall have access at reasonable times to information pertaining to the development or operation thereof, including operator's books and records relating thereto."

No evidence has been introduced or even alleged that Mr. Grider ever interfered with the operations by Ratliff or any of Ratliff's agents, employees or third party service companies or that any sabotage or unexplained losses occurred during the time Grider and other working interest owners had keys to the property.

None of the individual wells in question are located on any secured areas around Will Rogers International Airport in southwest Oklahoma City. Neither Mr. Grider nor anyone else visiting the wells poses any threat to airport operation.

In the spring of 1983, Mr. Grider questioned some of the Ratliff activities and some of the Ratliff entries on joint billing statements sent to him. Therefore, Ratliff changed the locks on the gates to all 17 properties. Attached in the Appendix hereto is a copy of Mr. Grider's letter dated

September 28, 1983, to Ratliff Exploration Company requesting that he be given a key to the premises after the locks changed.

In December, 1984, TXO purchased from Ratliff the aforesaid lands and began operating same.

Since assuming operations of the aforesaid oil and gas leases, TXO has refused to grant Mr. Grider a key. Such refusal is made despite the plain language of the Operating Agreement set forth above. Although TXO uses multiple locks interlocked to form a chain on each gate, only *one* key is needed to fit one lock and give access to all of the leases.

On February 22, 1985, Grider filed a Petition in the District Court of Oklahoma County in Case No. CJ-85-1689. The Plaintiff's Petition set forth two separately numbered causes of action. It alleged fraudulent billing practices on the part of Ratliff and TXO and underpayment of proceeds of hydrocarbon production by Ratliff and TXO on the 17 oil and gas wells located in Oklahoma.

As a part of the prosecution of that action, Grider filed on July 10, 1985, his Motion for Entry Upon Land for Inspection and three other motions. By agreement counsel for the parties conferred and reached agreement on the other three motions. That announcement was made to the court when the parties appeared for oral argument on August 8, 1985. No agreement was reached on Grider's Motion for Entry Upon Land for Inspection. That motion was argued on August 9, 1985, and sustained by Judge Blevins.

As noted above, upon the application of Texas Oil and Gas Corp. and TXO Production Corp., the Oklahoma Su-

preme Court assumed original jurisdiction and overruled the decision of the District Court of Oklahoma County.

Respondent Guy Grider immediately filed a Motion for Rehearing as allowed by Oklahoma Supreme Court rules. In the Respondent's Motion for Rehearing, the constitutional issue of violation of Guy Grider's right to due process of law was specifically raised. Guy Grider argued with full citations of authority both that the Oklahoma Supreme Court decision deprived him of his ability to protect his property by lawful pretrial discovery and secondly, that the decision of the Oklahoma Supreme Court deprived Grider of property without due process of law.

These bedrock, constitutional arguments went unheeded by a divided majority of the Oklahoma Supreme Court. The Oklahoma Supreme Court order dated February 5, 1986, merely shows

"Rehearing denied.

CONCUR: Doolin, V.C.J., Hodges, Lavender, Kauger, Summers, JJ.

DISSENT: Hargrave, Opala, Wilson, JJ."

REASONS FOR GRANTING THE WRIT

The decision of the Oklahoma Supreme Court to reverse the lower court decision on pretrial discovery and its subsequent 5-3 decision to deny a rehearing totally disregard the plain language and fundamental tenets of portions of the Constitution of the United States. These decisions choke off normal and necessary pretrial discovery by a party visiting *his own land* thereby rendering utterly meaningless the judicial process and the liberty of a person to fully protect his property by due process of law.

Such absolute abridgement of constitutional rights cannot stand.

1. Certiorari Should Be Granted Because the Decision Below Conflicts With Decisions of This Court on the Issue of Due Process of Law.

The two decisions of the Oklahoma Supreme Court in this litigation clearly deny Guy Grider the ability to visit *his own land* in an effort to gather evidence on pending litigation. The effect of these decisions below is to violate Guy Grider's constitutional right to due process of law which includes Guy Grider's right to present every aspect of his case in court. The decision of the Oklahoma Supreme court renders meaningless any subsequent trial because Guy Grider cannot discover or present all relevant evidence.

This High Court has regularly held that procedural due process requires an opportunity to be heard in a "meaningful manner," to-wit:

> "Procedural due process includes the right to notice and opportunity to be heard at a meaningful time

> *and in a meaningful manner.*" *Fuentes* v. *Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972), rehearing denied, 409 U.S. 902, 93 S.Ct. 177, 34 L.Ed.2d 165 (1972). (Emphasis added)

> "What the constitution does require is 'an opportunity [to be fully heard] granted at a meaningful time and in a meaningful manner.' *Armstrong* v. *Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965) . . . 'for a hearing appropriate to the nature of the case' *Mullane* v. *Central Hanover Bank and Trust Co.*, supra, U.S. at 313, 70 S.Ct. and 657' ". *Boddie* v. *Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

> "Fundamental requirement of due process is the opportunity to be heard; it is an opportunity which must be granted in a meaningful time and in a meaningful manner," *Armstrong* v. *Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965).

And this High Court has specifically held previously that being heard "in a meaningful manner" under the constitutional guarantee of due process of law requires "that there be an opportunity to present every available defense," *Landsey* v. *Normet*, 405 U.S. 56, 92 S.Ct. 862, 31 L.Ed.2d 36 (1972), and to file all appropriate motions and pleadings essential to present claims and raise relevant issues, *Holt* v. *Commonwealth of Virginia*, 381 U.S. 131, 85 S.Ct. 1375, 14 L.Ed.2d 270 (1965).

In the case at bar, any kind of hearing or trial that occurs when Guy Grider is prevented from presenting all possible evidence of what occurred on his own property is utterly meaningless. It renders the bedrock constitutional guarantee of due process of law into a hollow promise.

Under American jurisprudence of over 200 years, the trial of a lawsuit climaxes a period of pretrial discovery and pits two adversaries armed with all relevant facts concerning the constroversy at bar. Pretrial discovery in the federal court system and in nearly every state is to be broadly read and interpreted to assist the trier of fact in its mission at trial. And the only guarantee of this full and fair trial is the due process clause of the United States Constitution. This constitutional guarantee must not degenerate into a "hollow promise" as previously noted by this Court, to-wit:

> "In citing the due process clause of the 14th Amendment of the United States Constitution, the United States Supreme Court held that access to the courts 'would be a hollow promise' unless such access was meaningful and real." *United Transportation Union* v. *The State Bar of Michigan*, 401 U.S. 576, 91 S.Ct. 1076, 28 L.Ed.2d 339 (1971).

The action of the Oklahoma Supreme Court is to directly deny a full and fair trial by limiting pretrial discovery. This is a giant step backward. It is a step backward that this High Court has already prevented. In the case *Williams* v. *Florida*, 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970), Justice White held:

> "The adversary system of trial is . . . not yet a poker game in which players enjoy an absolute right always to conceal their cards until played. We find ample room in that system, at least as far as due process is concerned, for the instant Florida rule, which is designed to enhance the search for truth . . . *by ensuring both the defendant and the state ample opportunity to investigate certain facts crucial to the determination of guilt or innocence.*" (Emphasis added.)

However, due process and access to court are meaningless phrases (or hollow promises) if a litigant cannot conduct necessary pretrial discovery. In the case at bar, it is vital that Guy Grider obtain a key for access to his oil and gas leases operated by TXO. Guy Grider seeks to view what transpires on wells wherein he owns a substantial share. And the order of Judge Blevins merely returned Guy Grider to the status he previously enjoyed in having a key to the aforesaid leases in the past from the prior operator.

In the unlikely event that Mr. Grider's visits to the leases would ever interfere with the operations of TXO, or in any way become merely vexatious, oppressive or unduly burdensome to the lawful operator, then the operator may apply for a protective order under appropriate provisions of the Oklahoma Discovery Code, to-wit:

> "Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending . . . may enter any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense." 12 O.S. Supp. 1985, §3203C.

Simply put, a "meaningful" trial or hearing must be "fundamentally fair," *Lassiter* v. *Department of Social Services of Durham County, North Carolina*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981), *rehearing denied*, 453 U.S. 927, 102 S.Ct. 889, 69 L.Ed.2d 1023 (1981). And basic fairness and integrity of the factfinding process are the "guiding stars" of the constitutional guarantee of due process of law, *Boykins* v. *Fairfield Board of Education*, 492 F.2d 697

(5th Cir. 1974), *cert. denied*, 420 U.S. 962, 95 S.Ct. 1350, 43 L.Ed.2d 438 (1975).

In this litigation, Guy Grider has been denied a simple and fundamental constitutional right. By a 5-3 vote of the Oklahoma Supreme Court, Mr. Grider cannot perform pretrial discovery on his own land. This denial prevents him from presenting at trial all aspects of his case. "Trial" under these circumstances is utterly meaningless. This denial reduces Guy Grider's constitutional right to due process of law to a "hollow promise" that Justice White warned against in 1970 in *Williams* v. *Florida*, supra. Such a blatant denial of constitutional rights cannot stand.

CONCLUSION

For the foregoing reasons and authorities cited therefor, Guy Grider prays that this petition for writ of certiorari should be granted.

Respectfully submitted,

DANIEL J. GAMINO
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(405) 840-3741

Attorney for Petitioner
Guy Grider

May, 1986

CERTIFICATE OF SERVICE

This is to certify that three (3) true and correct copies of this Petition for Writ of Certiorari were served by placing them in the U.S. Mail, with postage fully prepaid, to all parties required to be served, to-wit:

James Gaitis
Attorney at Law
117 Park Avenue
Oklahoma City, OK 73102

Mr. Robert D. Baron
Fellers, Snider, Blankenship, Bailey & Tippens
Attorneys at Law
24th Floor First National Center West
Oklahoma City, OK 73102

This ..... day of May, 1986.

DANIEL J. GAMINO

APPENDIX

[Filed Feb. 5, 1986]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, February 5, 1986

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

* * * * * *

64,933 Texas Oil & Gas Corporation and TXO Production Corporation v. The Hon. James B. Blevins, District Judge etc. et al.

Rehearing denied.

CONCUR: Doolin, V.C.J., Hodges, Lavender, Kauger, Summers, JJ.

DISSENT: Hargrave, Opala, Wilson, JJ.

* * * * * *

(s) *Ralph B. Hodges*
ACTING CHIEF JUSTICE

[APPENDIX]

[Filed Sep. 16, 1985]

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

TEXAS OIL & GAS CORP., and TXO PRODUCTION CORP., Petitioners,	)	
vs.	)	No. 64,933
THE HONORABLE JAMES B. BLEVINS, DISTRICT JUDGE FOR THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA and GUY GRIDER, Respondents.	)	

ORDER

Original jurisdiction is assumed. Writ of Prohibition issue prohibiting respondent, James B. Blevins, District Judge, Oklahoma County, or any other assigned judge, from enforcing an Order of Inspection as to the furnishing of a duplicate set of keys to plaintiff in Cause CJ-85-1689, filed in the District Court of Oklahoma County and Styled: "GUY GRIDER v. RATLIFF EXPORATION COMPANY, et al."

The requirement to furnish a duplicate set of keys to the lease gates goes beyond the scope of entry and inspection allowed by 12 O.S. 1981, §3211(A)(2).

DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS *16th* DAY OF *September*, 1985.

(s) *Robert Simms*
CHIEF JUSTICE

September 26, 1983

RATLIFF .01

Ratliff Exploration Company
Attn: Ralph Lamb
First Oklahoma Tower
210 West Park Avenue Suite 1950
Oklahoma City, OK 73102

SUBJECT: ACCESSIBILITY OF WORKING INTEREST OWNERS TO OIL AND GAS WELLS

The Ratliff Exploration Company, in the spring of this year, changed the gate locks on oil and gas wells in which I have a working interest, thereby denying me access. This lock change occurred in the same time period in which I was questioning the source, use and destination of oil and gas from and to leases that I had an interest in.

I am not implying or saying that this questioning of mine resulted in a change in Ratliff's policy toward owner accessibility to oil leases. All that I know is my key no longer fits any gate lock.

I am a well known Oklahoma City business man being in the grocery business for 30 years. I have secured a comfortable sum of money for retirement by using prudent business practices. I have lost inventory control, which no successful business man would tolerate, by your action of locking me out of well leases on which I have a working interest. By monitoring these oil and gas leases in the past, I was able to question your monthly billing statement and had one bill reduced from $10,000.00 to $2,000.00 and another reduced from $20,603.00 to $3,295.00.

I am seventy years plus and fear bodily harm if I have to continue climbing over gates that restrict me from monitoring changes in gas pressure, gas production charts on site, quantity of oil stock and observing work in progress for which I will be billed.

[APPENDIX]

I understand the concern of your company toward the safety of the oil lease equipment, company personnel and the working interest owners. I am quite willing to accept full responsibility for any injury on my part. However, I have never tampered with any valves etc. and do not intend to in the future.

I hope you understand that as a business man I intend to insure my investment as best I can. I do want a key/lock to each and every well that I have a working interest. If I have not received a key/lock by October 14, I am assuming that you have no intention of cooperating on this matter. In that event, I will be forced to take legal action.

Sincerely,

(s) *Guy Grider*
Guy Grider

Copies to: Don Estes
Diversified Oil and Gas Exploration
Marvin York, Attorney at Law